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August 15, 2005

Honorable Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 05-C-0616

Dear Secretary Brilling:

Enclosed please find fifteen (15) copies of the Communications Workers of America's comments in Case 05-C-0616 as per the Commission's Procedural Ruling issued July 13, 2005.

Respectfully submitted,

Kenneth R. Peres

Kenneth R. Peres, Ph.D.
CWA Economist

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission
to Examine Issues Related to the Transition   Case 05-C-0616
to Intermodal Competition in the
Provision of Telecommunications Services
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Comments of the Communications Workers of America, AFL-CIO

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I. Introduction

On June 29, 2005, the Public Service Commission (PSC) issued an Order Initiating a Proceeding and Inviting Comments on a Motion to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services. The Communications Workers of America (CWA) hereby presents our comments in this proceeding.

CWA represents approximately 80,000 employees in the state of New York who are employed in traditional wireline, wireless, cable, broadcasting, publishing, manufacturing, airlines, health care, local government and other public and private sector organizations. CWA members have an interest in this proceeding as workers in the industry and as consumers of communications services.

The goal of this proceeding is to conduct a wide-ranging review of PSC telecommunications policies, practices, and rules in light of the fast changing telecommunications environment. The PSC seeks public input on broad principles and appropriate changes to the regulatory framework, with an objective to eliminate, consistent with the public interest and to the extent practicable, asymmetrical regulation so as to treat as even-handedly as possible each telecommunications provider of wired and wireless, IP-enabled or traditional circuit-switched, voice, date, or video.[1]

The PSC should establish a regulatory framework with universal service, quality service and quality jobs, and responsible corporate practices and consumer protections as its objectives. The PSC should not merely "harmonize down," but where necessary to protect the public interest, should harmonize regulation over all providers – to the extent allowed by law - to achieve these objectives and to restore an environment that supports good jobs in this dynamic industry while promoting quality services to all residents and businesses in New York.

A. Questions Concerning This Proceeding

It is always helpful to have a wide-ranging discussion concerning changes in the telecommunications industry and the need to insure that regulations are effective in protecting the public interest. However, this proceeding has a number of troubling components.

First, we raise the question of whether this proceeding is part of a broader strategy to reduce important regulations on the telecommunications industry in New York that continue to be necessary to protect the public interest in quality affordable telecommunications services for all citizens and businesses in the state. The PSC already has undertaken a number of incremental steps that resulted in a reduction of service quality protections for consumers. In 2000, a number of service standards were relaxed.[2] In 2005, the PSC stepped away from an 11-year policy of regulating Verizon through incentives and

[1] State of New York Public Service Commission, *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Order Initiating Proceeding and Inviting Comments ("Order Initiating Proceeding") Issued June 29, 2005, 4.

[2] Case 97-C-0139, Service Quality Standards for Telephone Companies.

penalties. In the Order initiating this proceeding the PSC states that "(w)e intend to eliminate… the asymmetrical aspects of current policies, practices and rules so as to treat each telecommunications provider of wired and wireless, IP-enabled or traditional circuit switched, voice, data or video – as even-handedly as possible given current statutory constraints."[3] Given such PSC statements and actions, it is logical to conclude that the PSC will relax regulations to the level of the least regulated provider. Such "downward harmonization" would result in fewer protections for New York's residential and business consumers. Instead, the PSC must ensure that all carriers are subject to those regulations that are necessary to protect the public interest in quality affordable services.

Second, the time frame of this proceeding is too short to allow for an adequate and comprehensive analysis of the State's telecommunications market and regulatory structure much less consider specific regulatory changes.

Third, this proceeding, as currently constituted, does not include adequate provision for public hearings. CWA recommends that at least six public hearings be conducted throughout the State. These hearings should not combine both educational presentations by the Staff and public comments. After all, citizens should be given a reasonable amount of time to consider the PSC's educational presentation before they make comments. In addition, the hearings should be conducted in the evening to allow as much participation as possible from those who have to work during the day.

Fourth, any specific changes that the PSC would seek to implement would require a separate proceeding that is informed by the State Administrative Procedures Act and, possibly, proposed legislation. The PSC obtains its authority from the legislature. Any

[3] Case 05-C-0616, Order Initiating Proceeding, p. 4.

proposed changes that affect legislative intent or laws would have to be instituted through the Legislature.

Despite these concerns about the rationale and schedule for this proceeding, CWA submits the following comments concerning a number of issues raised by the Commission in its Order.

B. Status Of Telecommunications Today: Converging And Competing Networks, Digital Divide, Destruction Of Good Jobs, And Inadequate Investment In Current And Advanced Networks

Verizon is the dominant provider of communication services in New York. However, new technologies are driving competition and destabilizing the old regulatory framework. Wireless, cable or IP-enabled cable telephony, competitive local exchange carriers (CLECs), and Voice over Internet Protocol (VoIP) services (such as Vonage) over a broadband connection, e-mail, and instant messaging are all alternatives to traditional wireline telephone service.[4] According to the Federal Communications Commission (FCC), there are more wireless subscribers today than customers of incumbent telephone companies. Yet, there is no regulation of wireless prices, unlike wireline telephony.

Nationally, more than one million people subscribe to Internet telephony. Analysts predict 18 million – or 10 percent of all U.S. households – will use the Internet to make phone calls in just three years. With VoIP, cable companies and independent carriers compete directly with traditional wireline companies to provide service over a broadband connection. Yet, due to past regulatory disparities, cable modems are beating wireline DSL by almost two to one. In addition, traditional wireline service incurs costs and contributes to the public switched network in ways that VoIP providers do not. These include

[4] *Id.*, 6.

telecommunications taxes, payment of access charges for use of the network, requirements to ensure access to the disabled, contributions to the telecommunications relay service and the federal universal service fund.

Disparate regulation distorts the market and undermines the PSCs long-standing commitment to universal service. Moreover, competition drives incumbents and new entrants to focus on profitable markets, neglecting lower-revenue producing consumers and geographic regions. While such strategies make business sense, they do not serve the public interest in universal affordable quality networks serving all New York regions and citizens.

These challenges are compounded by the urgency of the investment challenge. New York should be at the cutting edge of advanced telecommunications services. Instead, we are falling behind; the best jobs in the industry are being destroyed; and all too many New Yorkers are still waiting to experience the information revolution. Unfortunately, the current structure of regulatory policy – uneven and inconsistent regulation of various parts of the industry – has aggravated these problems.

PSC policies, practices, and rules must encourage private investment in communications networks and step in to protect consumers and to ensure quality, affordable service provision where the market fails to deliver not only telephone service but also high-speed networks.

II. Goals of Telecommunications Regulation

The PSC states that its primary and overarching goal is to ensure that telecommunications services are available at just and reasonable rates and are provided in a safe and adequate manner. In addition, PSC policies and regulations are designed to protect consumers, encourage innovation and investment in the state's telecommunications infrastructure, and in general, promote the public interest.[5]

CWA concurs with these goals. The fundamental objectives of the PSC should be to promote 1) universal, affordable service; 2) quality service and quality jobs; and 3) responsible corporate practices and consumer protections. We elaborate below.

A. Universal, Affordable Service

Every resident and business in the state of New York should have affordable access not only to telephone service, but also to high-speed communications networks. The PSC has long made the provision of affordable, quality telephone service a top priority, recognizing that access to telephone service is essential to public safety and to full and equal participation in our economy and civic life. Universal service is also grounded in network economics: the value of the network increases with each individual or business that is connected to the network. Subsidies to low-income households through Lifeline and programs to increase access by persons with disabilities funded by the Telecommunications Relay fund have resulted in a 94.5 percent subscription rate to basic telephone service in the state of New York.[6] These programs must be continued and strengthened.

In today's world, achieving universal access to truly high-speed communications networks must also be a top PSC priority. Certainly, large and small businesses in every region of our state cannot prosper and grow without access to world-class high-speed networks to communicate with customers, suppliers, and employees. Equally important, individuals and households rely on high-speed Internet access not only to gather

[5] *Id*., 2.

[6] Data is from 2004. FCC, *Trends in Telephone Service*, April 2005, Table 16-2, page 16-4.

information and communicate with others, but for educational, economic, and civic activities. As voice telephony migrates to VoIP, consumers who lack affordable broadband access will pay more for basic telephone service, without access to the many features of IP-enabled service.

The United States has fallen to 16th in the world in broadband penetration, behind Canada, Japan, and Sweden.[7] This hampers our state and our nation's ability to compete globally and to realize the many social benefits of advanced communications networks. Ubiquitous high-speed communications networks can provide many improvements in health care delivery, education, job training, public safety, access for people with disabilities, civic participation, government service delivery, and other social uses, in addition to economic development and job creation.[8]

Therefore, the PSC must make it a top priority to adopt policies, practices, and rules to ensure that every New Yorker has access not only to safe, reliable, affordable telephone service, but also to affordable, truly high-speed communications networks. PSC policies should encourage private investment in advanced networks, while at the same time adopting policies to stimulate investment in networks serving geographic regions and customers in which the market is slow to deliver.

B. Quality Service, Quality Jobs

The PSC has long recognized that telecommunications services should meet the highest standards of quality, reliability, and safety. Quality service depends primarily on sufficient

[7] International Telecommunications Union, 2005.

[8] See Alliance for Public Technology, *A Broadband World: The Promise of Advanced Services*, 2003. Available at http://apt.org/confer/broadband-world.pdf

investment in telecommunications infrastructure and adequate staffing provided by trained, well-compensated career employees.

Competition alone will not assure quality service. In competitive markets, private firms target capital to profitable markets, leaving customers or regions that generate lower profits behind. Large business or high-revenue customers in urban areas may choose from a multitude of providers, while low-revenue customers and those in high-cost rural or exurban areas see service deteriorate.

The problem is exacerbated in this period of transition to high-speed networks. As incumbents such as Verizon invest in fiber to the premise, they neglect the copper network.[9] Yet, for many years to come, most New York residents and small businesses will continue to connect to the copper network for voice and, if they subscribe to DSL, for data service. Absent PSC oversight, incumbent carriers such as Verizon will continue to neglect the "old" network that will provide connectivity and be the carrier of last resort for the majority of New Yorkers.

Therefore, there is a continuing need for regulation of service quality of incumbents *and* new entrants who provide service over competing network technologies. Consistent with the PSC's goal of symmetrical regulation, all providers must be subject to similar service quality standards. At the same time, the PSC must ensure an adequate contribution from all providers that interconnect with the public switched network to support proper

[9] Even after $70 million in penalties assessed during the three-year existence of the Verizon Incentive Plan (VIP), Verizon's service quality is still substandard. Verizon missed the statewide annual Out-of-Service over 24-hours (OOS) target in each of the VIP's three years because of its failure to allocate enough capital and labor resources to significantly improve its performance. In the VIP's third year (March 2004 – February 2005), the OOS target was missed for at least a quarter of the year in 24 of Verizon's 35 Installation & Maintenance Centers. Service was especially poor in the Island Metro Region where the target was missed in 11 months in South Nassau, 9 months in North Nassau, and 8 months in South Queens. Slight improvements in 2004 were primarily credited by the DCI in its Audit Report to good weather and an increase in staffing.

maintenance of the carrier of last resort network (whether the traditional copper network or deployment of a new high-speed network).

The PSC should also adopt regulations that require reporting on real-time speed and reliability of broadband networks in order to provide consumers the information they need to select among broadband providers. In the same way that the airlines provide information about on-time performance and the EPA requires posting of gas mileage, broadband providers should be required to report publicly on actual speed of service. Since free markets require adequate information in order to operate efficiently, such information is essential to facilitate consumer choice in the broadband environment.

Current asymmetrical regulatory policies lead to another alarming outcome: they contribute to the destruction of some of the best jobs in the telecommunications industry, with negative impact on families, communities, and the state's economy. There is a great disparity between compensation levels, training, and career opportunity at the unionized incumbent telephone companies (Verizon, AT&T, Citizens) and the largely non-union cable companies.[10] Yet, due to asymmetrical regulation, among other factors, employment at the incumbent telephone companies has declined dramatically in recent years. Verizon, for example, has cut employment by 26 percent, or almost 8,200 jobs between 2001 and 2004.[11] (Employees at union-represented Cingular wireless now have the opportunity to negotiate improvements in wages, benefits, and working conditions. In contrast, Verizon Wireless continues to resist employee efforts to seek union representation.)

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[10] Nationally, the traditional wireline telephone carriers have eliminated 15.5 percent of their jobs since 1998. These jobs paid at least 26 percent more than comparable work in the cable industry. Turnover is 10 times higher in cable than among the Bell companies. The Bell companies provide twice the qualifying training as the cable companies. Jeffrey H. Keefe, *Racing to the Bottom: How antiquated public policy is destroying the bet jobs in telecommunications,* Washington D.C.: Economic Policy Institute, 2005.

[11] Job cuts at Verizon exceed the rate of decline in access lines and revenue. Thus, more than market share loss drives Verizon's job cutting.

With lower turnover rates, the unionized wireline telephone companies have greater incentives to invest in upgrading workers' skills, since the investment stays with the company. The impact of the higher investment in human resources by the unionized wireline telephone companies shows up in customer satisfaction surveys. According to the American Customer Satisfaction Index, wireline carriers provide significantly higher levels of customer service than cable and wireless carriers. The customer satisfaction rate in 2004 for wireline carriers was 71 percent, for wireless it was 63 percent, and for cable it was only 57 percent.[12]

Regulatory policies that tilt competitive advantage toward cable providers and independent VoIP companies not only distort the market and undermine universal service, they also contribute to the destruction of the best jobs in the telecommunications sector, with resulting negative impact on service quality, families, and communities throughout the state. The PSC therefore must ensure that its policies, rules, and regulations create a level playing field for competition while at the same time enforcing strong service quality standards on all providers.

C. Responsible Corporate Practices And Consumer Protections

Telecommunications providers must be held to the highest standards of ethics in their corporate practices, including financial transparency and accountability. The MCI/WorldCom and Global Crossing fraud-induced bankruptcies that destabilized the entire telecommunications industry underscore the importance of regulatory oversight to ensure public accountability and transparency in financial reporting. Responsible corporate practices also require an equitable corporate pay structure. CEO pay should be limited to

[12] ACSI, 2004 cited in Keefe, 7.

50 times average worker pay. Yet, Verizon CEO Ivan Seidenberg earned $ 13.1 million plus stock options with potential value of $27.4 million in 2004, which is 810 times average worker pay at Verizon.

The PSC has a unique role to play in addressing consumer complaints and enforcing strong consumer protections over all providers to discourage fraudulent practices. Competition alone will not protect consumers from abuse, and in some cases, such as slamming and cramming, competition exacerbates consumer problems. Consistent with the principle of regulatory symmetry as well as the requirements of consumer protection, the PSC should subject all carriers, including not only traditional wireline but also wireless and cable/VoIP telephony providers, to consumer protections.

In sum, the PSC should continue to make the provision of quality telecommunications service at reasonable rates and in a safe and adequate manner its top priority. In today's world of converging and competing networks, the PSC must not only preserve and promote quality, affordable universal voice service over traditional wireline networks, but also encourage the deployment of high-speed networks with affordable quality service provided to all citizens and regions of the state.

Below we provide CWA recommendations for policies to achieve the goals we have enumerated of universal service; quality service, quality jobs; and responsible corporate practices and consumer protections.

III. CWA Policy Proposals

In today's communications environment characterized by numerous competing networks, there continues to be an important role for regulatory policies, practices, and rules to protect consumers and to step in where the private market fails to deliver. The PSC must ensure that companies do not abandon service to rural, exurban, and low-income communities, even as competition thrives in the business and high-end urban communities.

It is critical for the PSC to maintain its jurisdictional authority over all telecommunications firms operating in the state regardless of whether it eliminates, adopts or modifies specific rules and regulations. This jurisdiction includes, but is not limited to, insuring the public interest in relation to affordable rates; safe and reliable service; service quality reporting and monitoring; consumer safeguards to protect against such things as slamming and cramming; and mergers, acquisitions, and changes of control. The CWA also recommends that the PSC actively assert its jurisdictional authority – to the extent allowed by law – over all providers of telecommunications services in New York.

A. The PSC Should Enforce Strong Consumer Protections On All Carriers Of Voice Services

The PSC has a unique role to play in addressing consumer complaints and enforcing strong consumer protections over all providers of voice services, regardless of the technology. Competitive markets alone will not protect consumers from abuse, and in fact, exacerbate the problem in some areas, such as slamming and cramming.

The PSC's consumer protection rules should apply equally to all providers of voice service, including traditional wireline, wireless, and VoIP/cable telephony providers. Consumers of all carriers deserve equal protection under PSC rules. Further, asymmetric regulation of consumer protection would impose costs and obligations on some carriers but not others, providing market advantage through regulatory arbitrage, not superior service or technological innovation.

Critical consumer protections that should apply to all carriers should include, at a minimum:

- Protections against slamming and cramming;
- Public safety requirements to provide 911 and E911 services;
- Requirements to provide advance notice of termination of service, contract disclosures, and privacy protections;
- Requirements to ensure that special needs customers continue to receive services that render telecommunications accessible, including Lifeline and relay services for the hearing impaired;
- Service quality reporting, as discussed in more detail below.
- The PSC should adopt new rules that would require public reporting of broadband speed and reliability. In competitive markets, consumers need adequate information to make informed choices about the services they purchase. In the broadband market, accurate information about speed and reliability will foster efficient, competitive markets and informed consumer choice. In the same way that airlines publicly report on-time arrivals, car companies report average mileage, and grocery stores calculate unit pricing, so, too, should broadband providers report average real-time speed of broadband service so that consumers can make informed purchasing decisions.

B. The PSC Should Strengthen Service Quality Regulation, Applicable To All Voice Carriers

CWA concurs with the PSC when it states " (r)egulatory reform in the area of telecommunications service quality must not compromise the state's economic well-being, security or safety.[13] We agree with the PSC "that high service quality is essential to ensure New York's leadership in telecommunications and that service quality must be maintained even in an evolving telecommunications market.[14]

The Commission contends that competition will necessarily improve service quality.[15] However, increasing competition does not necessarily lead to high levels of service quality. For example, Verizon's Out of Service performance has been substandard in areas

[13] Case 05-C-0616, Order Initiating Proceeding, p. 15.

[14] Case 05-C-0616, Order Initiating Proceeding, p. 14.

[15] See for example, Case

with significant competition including Westchester, Nassau, Queens and Suffolk counties. For example, in July 2005, Verizon filed Service Inquiry Reports for its substandard performance in North and South Westchester and South Nassau.[16]

Removing or relaxing service quality standards and measures place an inordinate amount of risk onto consumers. Customers will suffer if the Commission is wrong and competition fails to insure service quality. Service standards – especially when reinforced with carrier penalties and customer credits for substandard service - protect customers from this real possibility. Conversely, the existence of service standards harms no one if competition does improve service quality to levels at or above the standards.

The issue is not really the level of competition but the PSC's commitment to insure that all New Yorkers obtain a high level of service quality regardless of where they live, which carrier they use or the type of technology utilized to provide the service. Consequently, CWA opposes any effort to relax service standards based on levels of competition, size, technology or individual carrier.

1. All Carriers Should Be Held To Uniform Standards and A Basic Threshold Level Of Service In Order to Protect All Consumers

The PSC already has established that all local exchange carriers would be subject to the same general administrative, operational and performance standards.[17] All carriers should be subject to a threshold level of service in order to protect all consumers without discriminating according to area, specific carrier or type of technology utilized. This is not just a consumer protection issue but also a concern for economic development. The

[16] Cases 03-C-0971 and 00-C-1945, Service Inquiry Reports issued July 11, 2005. A service inquiry report is issued when Verizon fails to meet basic levels of service quality performance in the current month and any two of the 4 previous months statewide or for a Central Office or Installation Maintenance Center.

[17] Case 94-C-0095, Opinion Number 96-13, p. 32.

viability of the entire telecommunications system depends on its ability to connect everyone with service that is reliable and of high quality. Residential and business customers increasingly rely on the telecommunications network for information, sales and purchases, personal and business contacts, etc. Substandard service provided to any group or area within the state not only affects the economic welfare of that group but also degrades the vibrancy of the entire state's economy.

Service quality standards should apply to all providers to the extent that is legally feasible. In this sense, the PSC should expand service quality protections to those consumers who utilize wireless, cable, VoIP, etc. or other forms of telephony so that every consumer is protected and the level of service quality is improved throughout the state.

2. Objective, Output-Oriented Performance Measures Should Be Applied to All Providers

Output-oriented measures are the only valid means not only of informing consumer choices but also of supporting economic development in the state. Objective standards and performance measures – especially when supported by penalties and customer credits – provide both a measure of and incentive for better quality. For example, businesses and individuals need some assurance that installations and repairs will take place in a timely manner and that the network is reliable. The Installation within Five Day and Out of Service over 24 Hour standards are objective, easily defined and measured and can be applied uniformly to all providers throughout the State. They provide a uniform measure of the adequacy of a company's service.

There are two inadequate alternatives to such objective measures. One is the elimination of all service quality measures. This is not supportable since there would not be any way to gauge whether service quality is good or bad other than the self-selective process of complaining to the carrier or the PSC. In addition, having the opportunity to go to another provider – if one exists - provides little solace to an individual or business or an entire community in the midst of an out-of-service condition. Such complaints do not provide for any measure to meaningfully inform customer choice.

The other alternative is customer surveys. However, customer surveys and other subjective measures are extremely limited in terms of application and utility. Surveys are highly subject to bias based on the phrasing of questions. The applicability of true randomness in terms of service quality for such surveys is very difficult. After all, responses in areas with poor service quality would be different from areas with good service quality – and the differences can be noted even in different Central Office areas.

<u>3. Current Measures Should Be Strengthened And An Additional Measure of Broadband Speed Adopted</u>

The current measures be strengthened rather than relaxed. The PSC should not weaken standards at the same time that service quality is becoming an even more important concern. Our homes, our businesses, our family life increasingly depend on high quality service. After all, who loses with stronger standards? Not the residential or small business consumers or the telecom corporations that provide high quality services. The only losers with high quality standards are the telecom corporations that will provide poor quality services. Who loses with lower standards for repair appointments, installations, and answer time performance? The small business and residential consumers will lose if the PSC is wrong and competition does not lead to improved service quality. We need more protection during this time of transition, not less.

As discussed above, the PSC should also adopt measures to require public reporting of broadband speed and reliability so that consumers can make informed choices among broadband providers.

4. Reporting

The PSC should require all providers to report their service quality performance results according to uniform definitions. This would allow the PSC to know identify companies that are in compliance with a standard. It would also insure that companies measure their performance in every area they service and that they measure performance according to PSC definitions. This would ensure that consumers could readily compare performance among different companies on a valid basis.

C. The PSC Should Require All Providers That Use The Public Switched Network to Share In The Maintenance And Upgrading Of That Network

All carriers benefit from the ability to interconnect with a ubiquitous network. After all, no customer would subscribe to a network that serves only 100 other customers. But if the price is right and service is good, customers are willing to subscribe to a carrier serving only a handful of other customers *if and only if* that carrier can interconnect its network with networks that serve all customers. This is basic network economics and the basis of long-standing interconnection policies.

Because all carriers – whether traditional wireline, CLECs, wireless, or cable/VoIP telephony providers – benefit from the ability to interconnect with a high-quality ubiquitous network, all carriers should contribute to the maintenance and upgrading of that network. In the old days of regulated monopoly, the PSC could ensure ubiquitous, quality service through cross-subsidized rate regulation, access charges, and infrastructure investment mandates. But in today's competitive environment, these tools are subject to the danger of regulatory arbitrage. Above-cost regulated rates for business or urban customers allow competitors to win these lucrative customers; below-cost rates in high-cost rural areas discourage competitive entry and investment by the incumbent.

To address this problem in a competitive marketplace, public policy intervention is necessary to promote the public interest to ensure that all New Yorkers have access to at least one quality affordable network. The PSC should develop a method and plan that would require all providers that use the public switched network to share in the cost of maintenance and upgrading of that network.

D. The PSC Should Continue To Regulate The Rates, Terms, And Conditions Of Basic Telephone Service

The PSC should continue to regulate the rates, terms, and conditions of basic telephone service. This would include, at a minimum, single party access line; access to local/toll calling; local usage; tone dialing; access to emergency services; access to assistance services; and access to telecommunications relay services. This will ensure that all consumers have access to basic telephone service at just and reasonable rates and that they are provided in a safe and reasonable manner.

The PSC should open a proceeding to consider allowing incumbent local exchange carriers that elect to do so to exercise pricing flexibility for other services, contingent upon enforceable commitments to deployment timetables to invest in advanced networks in high-cost rural areas and underserved low-income communities and to maintain service quality standards. Failure to meet deployment timetables and service quality standards would result in substantial financial penalties and re-regulation of rates over non-basic services.

In the context of such a proceeding, the PSC should also ensure that annual price increases do not exceed the rate of inflation; that the PSC report annually on the impact of rate deregulation on the prices charges by carriers serving different markets and geographic regions in the state; and that the PSC retain authority to re-regulate prices if market conditions fail to protect consumers.

E. The PSC, In Coordination With The State Legislature Where Necessary, Should Adopt Policies To Accelerate Deployment Of Universal Affordable High-Speed Networks Serving All Regions And All Consumers In The State

Policies to accelerate the deployment of high-speed networks to every home and business in every region of the state should be the top priority of the PSC. High-speed networks are essential to maintain our state's leadership in the global economy, and to grow jobs particularly in regions and communities with high unemployment. Ubiquitous high-speed networks allow individuals to communicate with each other, gather valuable information, participate in economic and civic life, and provide social benefits in improved delivery of health care, education, job training, government services, public safety and other vital services.[18]

The current FCC definition of advanced services as data services delivered at 200 kbps in both directions is only a starting point. The true benefits of advanced networks require much faster speeds, at a minimum 20 mbps, in order to provide to consumers the benefit of voice, high-speed Internet access, and video. Other countries, including Japan and Korea, consider such speeds standard for Internet access.

[18] See Alliance for Public Technology, *A Broadband World: The Promise of Advanced Services*, 2003. Available at http://apt.org/confer/broadband-world.pdf

We propose a series of policy options to accelerate deployment of and access to high-speed networks.[19] Some of these options may require legislative as well as regulatory action. Where this is necessary, we encourage the PSC to use its position as the expert telecommunications agency in the state to educate the public and policymakers about the barriers to universal broadband deployment and policy options to overcome those barriers. Policy options to accelerate broadband deployment include:

1. Initiate a proceeding to collect data on broadband deployment and policy proposals to accelerate universal affordable quality broadband networks. The PSC should immediately establish a proceeding to collect detailed data on the status of broadband deployment in different regions, communities, and among different demographic groups in the state. The PSC should solicit public comment and hold public hearings to solicit proposals designed to accelerate universal affordable quality high-speed networks throughout the state.

2. Establish a Universal Service Fund to support universal broadband access to underserved high-cost areas and low-income households. All providers of voice and data service should contribute to the fund. The Fund could be available to subsidize deployment of advanced networks in high-cost rural areas and to low-income underserved communities, defined as those communities designated as federal empowerment zones. Alternatively or additionally, the Fund could be available to subsidize Internet access or customer premise equipment necessary for Internet access for consumers in high-cost rural areas or low-income households.

[19] *See* Alliance for Public Technology, *A Nation of Laboratories: Broadband Policy Experiments in the States*, 2004. Available at http://apt.org/publica/broadbandreport_final.pdf

3. Support broadband connections for all public safety and first responders. A portion of the advanced services Universal Service Fund would be dedicated to subsidies to police, fire, emergency personnel, and other first responders for access to high-speed networks to improve service delivery. This program expands upon the federal E-Rate program that provides Internet access to schools, libraries, and rural health providers.

4. Establish deployment timetables for investment in high-speed networks in underserved high-cost rural areas and low-income communities. In exchange for pricing flexibility over non-basic voice telephony services, incumbent carriers that are currently regulated would commit to enforceable deployment timetables to build-out advanced networks to high-cost rural areas and low-income communities. Failure to meet these timetables would result in re-regulation of services in addition to financial penalties.

5. Establish a state broadband authority. The state of Michigan established an independent state broadband authority, capitalized by the sale of state bonds. The duties of the authority included data collection on the state of broadband deployment throughout the state, reevaluating technologies and programs to encourage broadband services, and provision of financing in the form of loans to credit-worthy projects that provided broadband access to underserved areas. The authority also can serve as a planning agency to assist in public/private partnerships to aggregate demand to increase economic viability of broadband deployment to underserved areas.

6. Provide tax credits and subsidies for broadband deployment. The amount of the tax credit could be on a sliding scale, with larger credits to carriers that invest in high-speed networks delivering upwards of 10 mbps and to carriers that invest in high-cost rural areas or low-income communities (e.g. those designated as federal empowerment zones).

Rationalize tax and fee structures in a revenue neutral manner. Different taxes and fees apply to wireline, wireless, and video providers. As technologies converge to provide voice, video, and data, these tax and fee structures are anachronistic. Florida, among other states, established a statewide authority to rationalize taxation, with carriers providing similar services taxed at an equal rate. The state collects the taxes and fees and then disburses revenue back to the localities in a revenue neutral manner.

7. Leverage funding in other public programs for broadband deployment. Many states give extra points in competitive bidding for the federal low-income housing credit to developers that commit to build broadband networks in their housing projects. Similarly, the state could explore ways to use public health, education, and job training dollars to support broadband to the home where the broadband access supports publicly funded health care, education, or job training.

8. Require public reporting of speed and reliability of broadband networks. Consumers must have access to this information to make educated decisions among competing broadband providers.

V. CONCLUSION

Consumers of telecommunications services in New York – whether provided by the still-dominant carrier Verizon or by alternative carriers using wireline, wireless, cable, or VoIP facilities – continue to require PSC oversight to protect against fraudulent behaviors, to ensure the highest standards of service, to guarantee just and affordable service in a safe and adequate manner, to encourage deployment of advanced high-speed networks to all regions and communities, and to promote economic development and good jobs in the industry and throughout the New York economy.

The PSC must continue to maintain jurisdiction over all telecommunications providers in the state to the full extent permitted by law, including, but not limited to, insuring the public interest in affordable rates; safe and reliable service; service quality reporting and monitoring, including actual speeds of broadband services; mergers, acquisitions, and changes of control; and consumer safeguards to protect against slamming and cramming, ensure privacy, and proper disclosure.

Respectfully submitted,

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August 15, 2005

APPENDIX – CWA Answers to Specific Commission Questions

Consumer Protections

1. In view of the proliferation of competitive alternatives, is it appropriate for the Commission to relax some of its traditional consumer protections applicable to wireline companies?

The Commission should not relax its traditional consumer protections but should insure that all consumers are protected regardless of where they live, who provides their service, which technology is used to provide service or what level of competition exists. See Sections II C and IIIA.

2. Are there core protections… that should be enforced by the Commission, notwithstanding the existence of competitive choices? Should a set of core protections apply to wireless and VoIP/cable telephony, as well as traditional wireline?

Yes. See Section III B. Critical consumer protections that should apply to all carriers should include at a minimum:

- Protections against slamming and cramming;
- Public safety requirements to provide 911 and E911 services;
- Requirements to provide advance notice of termination of service, contract disclosures, and privacy protections;
- Ensure that special needs customers continue to receive services that render telecommunications accessible, including Lifeline and relay services for the hearing impaired;
- Service quality reporting, as discussed in more detail below.
- Public reporting of broadband speed and reliability.

3. Does the Commission have a unique role to play in addressing consumer complaints… should the Commission's complaint handling function and the authority to enforce core consumer protections be extended to wireless and VoIP/cable telephony?

Yes. See Section IIIA. The PSC's consumer protection rules should apply equally to all providers of voice service, including traditional wireline, wireless, and VoIP/cable telephony providers. Consumers of all carriers deserve equal protection under PSC rules. Further, asymmetric application of consumer protection rules would impose costs and obligations on some carriers but not others, providing market advantage through regulatory arbitrage, not superior service or technological innovation.

Universal Service

1. Do the universal service goals articulated in 1996 remain valid in 2005?

The goal of ensuring the provision of quality telecommunications services at reasonable rates continues to be primary. The goal that providers in like circumstances should be subject to like regulation should be interpreted to require similar regulation over providers of similar services, regardless of the technology used to provide the service.

2. Does the existing definition of "basic service" remain appropriate in today's environment?

The Commission should strongly consider including high-speed broadband to the list of basic services. Broadband is becoming increasingly important – even necessary – for full participation in economic development and, thus, enhancing economic welfare. By including broadband the PSC would assert another strong public interest component into its regulatory fabric. See Sections II A and III F.

3. Should there be a universal service fund to ensure generally affordable rates in "high cost" areas of the state?

Yes. The PSC should implement a state universal service fund that would insure the extension of high quality telecommunications services to as many consumers as possible whether they utilize the traditional copper network and the newer fiber-broadband network. The fund would support proper maintenance of the carrier of last resort network (whether the traditional copper network or deployment of a new high-speed network). In addition, the fund would support universal broadband access to underserved high-cost areas and low-income households. All providers of voice and data service should contribute to the fund. See Sections III C and E.

4. What approaches should we pursue to ensure the continued availability of affordable basic telecommunications service to all consumers in New York?

The PSC should continue to regulate the rates, terms and conditions of basic telephone service. The PSC should continue the Lifeline program and Telecommunications Fund to provide access to people with disabilities. In addition, the PSC should institute a universal service fund to ensure that high quality basic service – including broadband – should be available at affordable rates to as many New Yorkers as possible. See Sections III A-F.

Market Power and Regulatory Flexibility

1. What is the appropriate role of the regulator to prevent market power abuses? … Is there sufficient actual or potential competition… to prevent a firm from raising its price or providing poor quality service without suffering commensurate competitive losses?

Competition is not an end in itself. It is but one possible means to attain, in this case, affordable access to modern, high quality telecommunications services to as many New Yorkers as possible. The object of policy is to meet this goal – and protect the public interest – irrespective of whether competition exists or not. Competition may or may not be the instrument to attain these goals. For example, competition may pressure carriers to cut investment and workforce in order to maintain profit margins. In this case, competition would result in an eroded infrastructure and worse service in areas that were not sufficiently profitable.

The PSC should continue to regulate the rates, terms and conditions of basic telephone service. In addition, the PSC should institute a universal service fund to ensure that high quality basic service – including broadband – should be available at affordable rates to as many New Yorkers as possible.

The PSC should open a proceeding to consider pricing flexibility for non-basic services, contingent upon commitments to invest in advanced networks in high-cost rural areas and underserved low-income communities. See Section III D.

Service Quality

1. How should we adapt our service quality regulation to the marketplace realities?

Consistent with the PSC's goal of symmetrical regulation, all providers must be subject to similar service quality standards. The issue is not the level of competition but the PSCs commitment to insure that all New Yorkers obtain a high level of service quality regardless of where they live, which carrier they use or the type of technology utilized to provide the service. Consequently, the PSC should not relax service standards based on levels of competition, size, technology or individual carrier.

2. Are output-oriented performance measures still valid… and, if so, should they be expanded to include all modes…?

Output-oriented performance measures remain valid and should be applied to all providers. See Section III B2.

3. Should proactive service quality performance oversight and enforcement of whatever breadth be limited to less competitive markets or geographic areas?

No. All New Yorkers should obtain a high level of service quality irrespective of the level of competition, the specific carrier, the technology used or the location of the consumer. See Section III B.

5. Is our performance-centric approach appropriate in an era of intermodal competition where other service providers… are not subjected to our regulation?

Yes. The PSC should expand its service quality protections to as many consumers as the law will allow. See Section II A and III B.

7. Should we modify, relax or eliminate performance-based standards in competitive markets?

No. All New Yorkers should obtain a high level of service quality irrespective of the level of competition, the specific carrier, the technology used or the location of the consumer. See Section III B.

8. Are performance-based standards essential to ensure that consumers have access to a reliable, seamless, network…?

Yes. In addition, the PSC should establish a standard requiring reporting of actual broadband speeds and reliability. See Section III B 2.

9. Is reporting based on size still relevant? Should we focus our reporting requirements on less competitive markets or geographic areas?

No. New Yorkers should be able to obtain information on their carrier regardless of the size of that carrier. See Section III B 1.

10. Should we continue to allow an exception for carriers that provide service solely by repackaging or reselling another carriers' service?

No. These carriers should be protected by the Performance Assurance Plan standards. These carriers market their services as "their" services without reference to the fact that they rely on the incumbent for the underlying facilities and, in many cases, workforce. Thus, the services these carriers deliver should also be subject to the same rules and regulations that apply to other carriers.

11. Should all carriers be held to a threshold standard for service?

Yes. See Section III B1.

12. Are the CTRR measures still reflective of the quality of service provided to consumers?

Yes. However, the current measures including CTRR should be strengthened. See Section III B3.

14. Should a periodic survey of customer satisfaction be used?

No. See Section III B2.

15. Is our PSC Complaint rate level still relevant?

The relevance of the PSC complaint rate was significantly reduced following the changes instituted by the Commission.

16. Should Parts 602 and 603 be reexamined in light of the changing market? Is additional streamlining needed?

The issue is not really the level of competition but the PSC's commitment to insure that all New Yorkers obtain a high level of service quality regardless of where they live, which carrier they use or the type of technology utilized to provide the service. Consequently, CWA opposes any effort to relax service standards based on levels of competition, size, technology or individual carrier.

17. Is the information from annual construction budgets still needed?

Yes. The more important question concerns the Commission's responsibility to ensure that adequate levels of investment are being made in the underlying network. Verizon in particular has reduced investment in the non-fiber plant upon which millions of New Yorkers rely. All providers that use the public switched network share in the maintenance and upgrading of that network. See Section III C.